

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,361

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Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Aging and Disabilities substantiating a report of exploitation against the petitioner involving his elderly and disabled sister. The petitioner seeks to have the report expunged from the Department's "registry".

FINDINGS OF FACT

In April, 1994, the Department received a report from a psychiatric RN employed by the visiting nurses that one of her patients, a sixty-two-year-old woman with longstanding psychiatric problems, had told her that her brother had been having "sexual relations" with her. Upon receiving the report, a Department investigator interviewed the nurse, the alleged victim, the alleged victim's brother, and a sister of the petitioner and the alleged victim.

The investigator testified that she found the alleged victim to be anxious and distraught, with the demeanor of a person on psychotropic medication. The petitioner admitted to her that he had touched his sister on the breasts and genitals, but insisted that it was consensual. Based largely on the alleged victim's diagnoses and demeanor and the petitioner's admissions, the Department determined that the incident constituted sexual exploitation by the petitioner of his sister.

At the hearing the petitioner's and the alleged victim's sister testified that the petitioner lives in a basement room in her house, which is part of a modest family compound that also includes the house where the alleged victim lives nearby. The sister testified that the alleged victim has a history of depression and has been prescribed medication by a psychiatrist for several years. She stated that her sister, the alleged victim, does not venture out much, and that she is dependent on her and the petitioner for shopping, household maintenance, and other chores. She testified that the petitioner took advantage of her sister's dependence on him to humiliate her verbally and to exploit her sexually, and that her sister did not have the emotional capacity to resist. She also stated that her sister was too upset to have to come in and testify as to the allegations.

At the hearing the petitioner did not deny that he touched his sister's breasts and genitals in a sexual manner. His "defense" is based on his opinion that his sister is not ill. He maintains that she consented to his advances, and that she reported the incidents just to make trouble for him. The petitioner did not dispute, however, his sister's medical diagnosis and history of psychiatric treatment.

The hearing officer deemed all the testimony of the petitioner's and the alleged victim's sister to be highly credible. The petitioner, on the other hand, struck the hearing officer as unctuous and self-serving. Credible evidence establishes that the petitioner took advantage of his sister's disability and dependent circumstances to gratify his own sexual desires.

### ORDER

The Department's decision is affirmed.

### REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse and exploitation of elderly and disabled persons and to keep those reports that are "substantiated" in a "registry" under the name of the person who committed the abuse. 33 V.S.A. §§ 6906 and 6911. Within 30 days of notification that a report of abuse has been substantiated against them individuals can apply to the human services board for a fair hearing on the grounds the report is unsubstantiated. Id. § 6906(d). Reports that are found to be unsubstantiated must be destroyed pursuant to 33 V.S.A. § 6906(e) and not entered in the Department's registry.

The statute which protects elderly and disabled adults, 33 V.S.A. § 6902, defines "exploitation" as follows:

As used in this chapter:

...

(7) "Exploitation" means:

...

(D) Any sexual activity with an elderly or disabled adult when the elderly or disabled adult does not consent or when the actor knows or should know that the elderly or disabled adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship.

As found above, the petitioner's conduct in this case clearly meets the above definition. Based on the above findings and conclusions, the Department's decision in this matter is affirmed.

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